

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRANCE WAYNE,

Plaintiff,

v.

Case No. 13-14495
Honorable Linda V. Parker

DANIEL HEYNS, BRAD PURVES, and
LLOYD RAPELJE,

Defendants.

OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE MONA K. MAJZOUN'S JUNE 6, 2014 REPORT AND RECOMMENDATION [ECF NO. 22]; (2) GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS [ECF NO. 14]; AND (3) DISMISSING DEFENDANT LLOYD RAPELJE AS A DEFENDANT

Plaintiff filed this lawsuit against Defendants claiming violations of his civil rights under 42 U.S.C. § 1983. The matter originally was assigned to the Honorable Sean F. Cox. On November 12, 2013, Judge Cox referred the matter to Magistrate Judge Mona K. Majzoub for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A) and/or a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 7.) On January 7, 2014, Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 14.) Plaintiff filed a response to the motion on March 10, 2014. (ECF No. 20.) Judge Cox reassigned the matter to the undersigned pursuant to Administrative Order 14-AO-030 on May 28, 2014.

On June 6, 2014, Magistrate Judge Majzoub filed a Report and Recommendation (R&R) recommending that this Court grant in part and deny in part Defendants' motion to dismiss and dismiss some claims not challenged in Defendants' motion pursuant to 28 U.S.C. § 1915(e)(2)(B). (ECF No. 22.) Magistrate Judge Majzoub concludes that Plaintiff's claims against Defendants in their official capacities for monetary relief should be dismissed, as they are barred by the Eleventh Amendment. (*Id.* at 7.) She also concludes that Plaintiff's claims against Defendant Lloyd Rapelje therefore are moot, as Defendant Rapelje is the Warden of the Saginaw Correctional Facility and Plaintiff no longer is incarcerated there. (*Id.*) Magistrate Judge Majzoub then concludes that Plaintiff fails to state a claim on which relief may be granted with respect to his Fourteenth Amendment substantive due process and equal protection claims and his discrimination claims brought under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. (*Id.* at 11-14.) The magistrate judge concludes, however, that Plaintiff states a viable Eighth Amendment claim related to MDOC's recently adopted menu for prisoners and that Defendants are not entitled to qualified immunity. (*Id.* at 7-11, 15-16.)

At the conclusion of the R&R, Magistrate Judge Majzoub advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at 17-18.) She further specifically advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal." (*Id.* at 17) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Majzoub. Accordingly,

IT IS ORDERED, that Magistrate Judge Majzoub's June 6, 2014 Report and Recommendation (ECF No. 22) is **ADOPTED**;

IT IS FURTHER ORDERED, that Defendants Heyns, Purves, and Rapelje's motion to dismiss (ECF No. 14) is **GRANTED IN PART AND DENIED IN PART** in that the Court **DISMISSES** Plaintiff's claims for monetary relief, his Fourteenth Amendment substantive due process and equal protection claims and his discrimination claims brought under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, and all claims against Defendant Rapelje. Defendant Rapelje therefore is **DISMISSED AS A PARTY** to this lawsuit.

S/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: July 8, 2014

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, July 8, 2014, by electronic and/or U.S. First Class mail.

S/ Richard Loury
Case Manager